

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHINA EDUCATION ALLIANCE, INC.,

Plaintiff,

-against-

SHERB & CO., LLP,

Defendant.

Civil Action No.
1:13-CV-4381-RA

ANSWER

JUDGE: Ronnie Abrams

Defendant SHERB & CO., LLP, by and through their attorneys, WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP responds to the allegations in the Complaint as follows:

NATURE OF THE ACTION

1. Denies the allegations set forth in paragraph "1" of the Complaint and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

PARTIES

2. Denies having knowledge or information sufficient to form a belief as to the allegations set forth and phrased in paragraph "2" of the Complaint.

3. Admits the factual allegations set forth in paragraph "3" of the Complaint except that defendant withdrew from the PCAOB in June 2013 and the withdrawal remains pending.

4. Admits, except that there are 8 partners at SHERB & CO., LLP instead of 7 as set forth in paragraph "4" of the Complaint.

JURISDICTION AND VENUE

5. Denies the allegations set forth in paragraph "5" of the Complaint. This Court does not have jurisdiction as this dispute must be adjudicated by arbitration.

6. Denies the allegations set forth in paragraph "6" of the Complaint.

FACTS RELEVANT TO ALL CLAIMS

7. Denies the allegations set forth in paragraph "7" of the Complaint in that, as phrased, they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

8. Denies the allegations set forth in paragraph "8" of the Complaint in that, as phrased, they are vague and ambiguous, and the documents referenced speak for themselves. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

9. Denies the allegations set forth in paragraph "9" of the Complaint in that, as phrased, they are vague and ambiguous, and the documents referenced speak for themselves. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

10. Denies the allegations set forth in paragraph "10" of the Complaint in that, as phrased, they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

11. Denies the allegations set forth in paragraph "11" of the Complaint in that, as phrased, they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

12. Denies the allegations set forth in paragraph "12" of the Complaint in that, as phrased, they are vague and ambiguous, and the documents referenced speak for themselves. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

13. Denies the allegations set forth in paragraph "13" of the Complaint in that, as phrased, they are vague and ambiguous, and the documents referenced speak for themselves.

Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

14. Denies the allegations set forth in paragraph "14" of the Complaint in that, as phrased, they are vague and ambiguous, the quotation is without citation, and the documents referenced speak for themselves. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

15. Denies the allegations set forth within paragraph "15" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

16. Denies the allegations set forth within paragraph "16" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION

17. Defendant repeats, reiterates and re-alleges each, every, and all responses contained in the foregoing paragraphs of this Answer, inclusive, with the same force and effect as if set forth more fully herein.

18. Denies the allegations set forth in paragraph "18" of the Complaint in that, as phrased, they are vague and ambiguous, and the documents referenced speak for themselves. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

19. Denies the allegations set forth within paragraph "19" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

20. Denies the allegations set forth within paragraph "20" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

21. Denies the allegations set forth within paragraph "21" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

22. Denies the allegations set forth within paragraph "22" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION

23. Defendant repeats, reiterates and re-alleges each, every, and all responses contained in the foregoing paragraphs of this Answer, inclusive, with the same force and effect as if set forth more fully herein.

24. Denies the allegations set forth in paragraph "24" of the Complaint in that, as phrased, and they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

25. Denies the allegations set forth in paragraph "25" of the Complaint in that, as phrased, and they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

26. Denies the allegations set forth in paragraph "26" of the Complaint in that, as phrased, and they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

27. Denies the allegations set forth within paragraph "27" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

28. Denies the allegations set forth within paragraph "28" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

29. Denies the allegations set forth within paragraph "29" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION

30. Defendant repeats, reiterates and re-alleges each, every, and all responses contained in the foregoing paragraphs of this Answer, inclusive, with the same force and effect as if set forth more fully herein.

31. Denies the allegations set forth in paragraph "31" of the Complaint in that, as phrased, they are vague and ambiguous. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

32. Denies the allegations set forth within paragraph "32" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

33. Denies the allegations set forth within paragraph "33" of the Complaint in the form alleged and refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

34. Denies the allegations set forth in paragraph "34" of the Complaint in that, as phrased, they are vague and ambiguous, and the quotation is without citation. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

35. Denies the allegations set forth within paragraph "35" of the Complaint in the form alleged and refers all questions of law to the Court.

36. Denies the allegations set forth within paragraph "36" of the Complaint in the form alleged and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION

37. Defendants repeat, reiterate and re-allege each, every, and all responses contained in the foregoing paragraphs of this Answer, inclusive, with the same force and effect as if set forth more fully herein.

38. Denies the allegations set forth in paragraph "38" of the Complaint in that, as phrased, they are vague and ambiguous, and the quotation is without citation. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

39. Denies the allegations set forth within paragraph "39" of the Complaint in the form alleged and refers all questions of law to the Court.

40. Denies the allegations set forth in paragraph "40" of the Complaint in that, as phrased, they are vague and ambiguous, and the quotation is without citation. Defendant otherwise refers all questions of law to the Court for determination and all questions of fact to the trier of fact.

41. Denies the allegations set forth within paragraph "41" of the Complaint in the form alleged and refers all questions of law to the Court.

AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION

42. Defendants repeat, reiterate and re-allege each, every, and all responses contained in the foregoing paragraphs of this Answer, inclusive, with the same force and effect as if set forth more fully herein.

43. Denies the allegations set forth within paragraph "43" of the Complaint in the form alleged and refers all questions of law to the Court.

44. Denies the allegations set forth within paragraph "44" of the Complaint in the form alleged and refers all questions of law to the Court.

45. Denies the allegations set forth within paragraph "45" of the Complaint in the form alleged and refers all questions of law to the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

1. The Complaint herein or a part thereof fails to state a cause of action upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

2. The Complaint must be dismissed as the parties entered into an arbitration agreement encompassing the allegations set forth in the Complaint.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

3. If any damages were sustained by the Plaintiff as alleged in the Complaint, which damages are expressly denied, all such damages have been caused and brought about in whole or in material part by the affirmative wrongdoing, negligence, want of care and other culpable conduct and/or comparative negligence of the Plaintiff and/or persons under the Plaintiff's control, without similar acts of the Defendant contributing thereto, and as a consequence thereof the Plaintiff's damages should be reduced by the proportion of the Plaintiff's culpable conduct which caused the alleged damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

4. Whatever injuries and/or damages were sustained by the Plaintiff, as alleged in the Complaint, were in whole or in part the result of the Plaintiff's own culpable conduct.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. Any damages sustained by the Plaintiff was a result of the acts or omissions of third persons or entities over whom the Defendant exercised no control.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

6. Plaintiff has failed to mitigate its damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

7. Plaintiff's claims are barred by the doctrine of unclean hands.

AS AND FOR A EIGTH AFFIRMATIVE DEFENSE

8. Some or all of Plaintiff's claims are duplicative.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

9. Some or all of Plaintiff's claims are barred by the statute of limitations.

AS AND FOR AN TENTH AFFIRMATIVE DEFENSE

10. The Complaint is barred by release.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

11. The Complaint must be dismissed for a failure to join a party under Federal Rule of Civil Procedure 19.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

12. Answering defendant reserves the right to amend its answer to assert additional affirmative defenses revealed in the course of further investigation and discovery.

WHEREFORE, Defendants demand judgment dismissing the Complaint and each and every cause of action alleged therein and for such other, further and different relief as this Court may seem just and proper, including costs and attorney's fees.

Dated: New York, NY
August 15, 2013

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: /s/ Thomas A. Leghorn
Thomas A. Leghorn (TL-6244)
Anastasios P. Tonorezos (AT-8709)
Jeffrey J. Cunningham (JC-0726)
150 E. 42nd Street
New York, NY 10017
Tel: (212) 915-5234
Fax: (212) 490-3038
Email: Thomas.Leghorn@WilsonElser.com
Attorneys for SHERB & CO., LLP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 15, 2013, a true and correct copy of ANSWER and attachments thereto were filed electronically with the Court using the CM/ECF system, which sent notification to the following parties:

SICHENZIA ROSS FRIEDMAN FERENCE LLP
61 Broadway 32nd Floor
New York, NY 10006
(212) 930-9700
Attn: Sameer Rastogi, Esq.
Christopher Pisacane, Esq.

/s/ Thomas A. Leghorn
Thomas A. Leghorn